AS TO THE ADMISSIBILITY OF

Application No. 19969/92
by Manfred DAX
against the Federal Republic of Germany

The European Commission of Human Rights (First Chamber) sitting in private on 7 July 1992, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
J.A. FROWEIN
E. BUSUTTIL
A. S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C. L. ROZAKIS
Mrs. J. LIDDY
MM. M. P. PELLONPÄÄ
B. MARXER

Mr. M. de SALVIA, Secretary to First Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 16 February 1992 by Manfred DAX against the Federal Republic of Germany and registered on 11 May 1992 under file No. 19969/92;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a German citizen born in 1947 and presently detained in prison in Asperg.

It follows from his statements and the documents submitted that on 29 April 1991 the applicant was convicted by the Freiburg Regional Court (Landgericht) of rape and sentenced to four years and nine months imprisonment. The court further ordered the applicant's preventive detention (Sicherungsverwahrung).

Preventive detention is ordered in accordance with Section 66 of the German Criminal Code (StGB), inter alia, if the convicted is an habitual offender representing a danger to society because of a tendency to commit offences causing serious bodily harm or material damage. Section 67c provides for judicial review, at regular two-year intervals (or less, at the discretion of the court), of the necessity to maintain preventive detention.

The applicant's appeal on points of law was rejected by the Federal Court (Bundesgerichtshof) on 10 September 1991 as being ill-founded. The applicant then lodged a constitutional appeal complaining of his preventive detention.

On 12 November 1991 this remedy was rejected by a panel of three judges of the Federal Constitutional Court (Bundesverfassungsgericht)

as offering no prospect of success. It is stated in the decision that according to constant jurisprudence preventive detention as a sanction for criminal offences of certain weight and as a protection of the public against the commission of further offences is compatible with the Constitution. The fact that other legal systems in Europe did not provide for preventive detention did not violate the principle of equality or any general principles of international law. Furthermore there was nothing to show that in the particular circumstances of the applicant's case preventive detention had been ordered arbitrarily or in violation of the applicant's constitutional rights.

COMPLAINTS

The applicant considers that his preventive detention violates Article 6 para. 2 and Article 7 para. 1 in connection with Article 5 para. 1 and also read in conjunction with Article 14 of the Convention. He submits that preventive detention is a measure which was introduced by Nazi legislation and is not compatible with the rule of law as it constitutes punishment for possible future offences.

THE LAW

The applicant complains of his preventive detention ordered by the Freiburg Regional Court in connection with his conviction of rape and a sentence of four years and nine months' imprisonment. He considers this measure to run counter to various provisions of the Convention.

However the Commission has already in previous cases held that preventive detention is in principle justified under para. 5 para. 1 (a) being detention, as in the applicant's case, after lawful conviction (No. 4210/69, Dec. 19.7.66, Collection 35, 144 (149 with further references at p. 150)). The measure pursues the legitimate aim of social protection and rehabilitation of offenders (cf. Eur. Court H.R., Weeks judgment of 2 March 1987, Series A No. 114, p. 25, para. 47) and does not therefore disclose any appearance of a violation of the Articles invoked by the applicant.

In any event the grounds relied on by the sentencing court for ordering preventive detention are by their very nature susceptible to change with the passage of time and it will be open to the applicant to pursue the remedies open to him once he has served his sentence and starts being detained for preventive purposes only.

It follows that the application in the present circumstances has to be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber Acting President of the First Chamber

(M. de SALVIA) (F. ERMACORA)